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Attorneys for Defendants Board of Trustees of  
 the California State University (erroneously  
 sued as "California Polytechnic State  
 University, San Luis Obispo"); Jeffrey  
 Armstrong; Tina Hadaway-Mellis; Valla  
 Hardy; and Amy Gode

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

ELIJAH BEHRINGER,  
 Plaintiff,

v.

CALIFORNIA POLYTECHNIC  
 STATE UNIVERSITY, SAN LUIS  
 OBISPO (CAL POLY); CAL POLY  
 PRESIDENT, JEFFREY  
 ARMSTRONG, in his official and  
 individual capacity; CAL POLY  
 ADMINISTRATOR TINA  
 HADAWAY-MELLIS, in her official  
 and individual capacity; CAL POLY  
 ADMINISTRATOR VALLA HARDY,  
 in her official and individual capacity;  
 CAL POLY ADMINISTRATOR AMY  
 GODE, in her official and individual  
 capacity; THE MUNICIPAL  
 GOVERNMENT OF SAN LUIS  
 OBISPO COUNTY; and COUNTY  
 HEALTH OFFICER PENNY  
 BORENSTEIN, in her official and  
 individual capacity,

Defendants.

Case No. 5:23-cv-00934-JFW (SK)

**DEFENDANTS' RESPONSE TO  
 PLAINTIFF'S OBJECTIONS TO  
 REPORT AND  
 RECOMMENDATION**

Ctrm.: 7A  
 Judge: Hon. John F. Walter  
 Trial Date: None set.  
 Date Action Filed: May 23, 2023

## INTRODUCTION

Judge Kim issued a thorough and well-reasoned Report and Recommendation dismissing Plaintiff's federal claims with prejudice and state claims without prejudice. Plaintiff's 26-page objection fails to engage with that Report and instead presents Plaintiff's view of what Plaintiff wants the law to be. His objections are neither pertinent nor valid and thus should be rejected. Accordingly, the Report and Recommendation should be adopted fully.

### I. ARGUMENT

"Parties filing objections to a magistrate's report and recommendation must specifically identify those findings objected to. Frivolous, conclusive, or general objections need not be considered by the district court." *United States v. Rudisill*, 2006 WL 3147663, at \*1 (D. Ariz. Nov. 1, 2006)). Plaintiff has failed to meet his burden.

First, Plaintiff's objections to the Report are without merit. For example, Plaintiff argues that the Report and Recommendation finding that he lacked standing is a "perversion" of the Equal Protection Clause because "[a]n obvious exception to this clause is when the government is committing a laundry list of crimes and constitutional violations." Obj. to R. & R. at 19-20. No such exception exists and the list of crimes and violations were also been rejected. R. & R. at 6-14.

Second, Plaintiff's objections are conclusory in that they simply restate the arguments already rejected in the Report (and by Courts elsewhere). For example, Plaintiff asserts that emergency orders are unconstitutional—they are not. CSU's Reply ISO MTD, ECF. No. 28 at 2; R. & R. at 8-9; *Kheriaty v. Regents of the Univ. of California*, 2022 WL 17175070 at \*1-2 (9th Cir. Nov. 23, 2022); *Guilfoyle v. Beutner*, 2021 WL 4594780, at \*14 (C.D. Cal. Sept. 14, 2021); *Schmidt v. City of Pasadena*, 2023 WL 4291440, at \*10 (C.D. Cal. Mar. 8, 2023); *Forbes v. Cnty. of San Diego*, 2021 WL 843175, at \*5 (S.D. Cal. Mar. 4, 2021); *Images Luxury Nail Lounge, Inc. v. Newsom*, 2021 WL 3686759, at \*8 (C.D. Cal. July 13, 2021)

1 (Walter, J.).

2 Third, Plaintiff's objections do not identify any allegations in his Amended  
 3 Complaint (or assert additional allegations) that warrant a different result. *McGee*  
 4 *v. Airport Little League Baseball Inc.*, 2023 WL 3582386, at \*1 (E.D. Cal. May 22,  
 5 2023) (adopting report and recommendation in full, holding that plaintiff's  
 6 conclusory objections "[did] not meaningfully address the deficiencies identified in  
 7 the findings and recommendations" and failed to "point to any specific facts alleged  
 8 in his second amended complaint that he contends supports his claims" nor "proffer  
 9 any additional factual allegations that he would include if granted leave to further  
 10 amend his complaint."); *see also Jackson v. Grant*, 2017 WL 5990087, at \*1 (C.D.  
 11 Cal. Nov. 30, 2017) (adopting report and recommendation where "nothing in  
 12 plaintiff's Objections alters the conclusion reached in the Report and  
 13 Recommendation that plaintiff's allegations are insufficient to nudge plaintiff's  
 14 federal civil rights claims 'across the line from conceivable to plausible.'").

15 In short, Plaintiff provides no reason that the Report and Recommendation  
 16 should not be adopted.

## 17 CONCLUSIONS

18 For the foregoing reasons, the Report and Recommendation should be  
 19 adopted in full.

20 Dated: October 10, 2023

CROWELL & MORING LLP

21 By: /s/ Uri Niv

22 Warrington S. Parker III  
 23 Uri Niv  
 24 Attorneys for Defendants  
 25 Board of Trustees of the California  
 26 State University; Jeffrey Armstrong;  
 27 Tina Hadaway-Mellis; Valla Hardy;  
 28 Amy Gode